

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

DAMALI D. GORDON,

Plaintiff,

No. 1:20-CV-01399-LMB-JFA

v.

Hon. Leonie M. Brinkema

EMILY BREEDING, individually
and t/a AL'S STEAK HOUSE;
DOROTHY BREEDING; and
ESTATE OF JAMES BREEDING,

Defendants.

**PLAINTIFF'S RESPONSE
TO ORDER TO SHOW CAUSE**

The complaint in this case was filed on November 16, 2020, and the summonses issued by the Clerk were delivered via certified mail, return receipt requested, on December 17, 2020. See U.S. Postal Service certified mail send receipts, tracking records, and return receipt postcard, Attachment I hereto (only one card was returned).

On or about February 5, 2021, counsel for the defendants, Marni E. Byrum, Esq., contacted plaintiff's counsel, and the lawyers held a telephone conference on February 8, 2021. In that conference, Ms. Byrum indicated that although each of the defendants had received service by mail, they would refuse (or she would instruct them to refuse) to accept that service, and would require the plaintiff to re-serve the pleadings by paid process server, unless the plaintiff amended her complaint.

The amendments sought are described in the joint declaration of plaintiffs' counsel attached hereto as Attachment 2, and the amendments made are described in the Motion for Leave to File First Amended Complaint to be filed as soon as possible after this Response.

On February 8, 2021, following the teleconference just mentioned, plaintiff's counsel proposed an extension of the defendants' time to respond to the original complaint as a way of facilitating the amendments sought. Ms. Byrum never responded to that proposal, and did not seek an extension of time to answer.

After further investigation, the plaintiff has acquired additional credible evidence to support her existing claims and to support new claims. That evidence is further described in the attached declaration.

In response to the defendants' tactical objection to the effectiveness of service, and in order to pre-empt any future similar objections, the plaintiff will cause the original complaint and its accompanying papers, along with the proposed amended complaint and its accompanying papers, plus this Response, to be served on the defendants via private process server by March 11, 2021, with a courtesy electronic mail copy to opposing counsel.

Given these circumstances, the plaintiff respectfully requests that the Court accept the present submission as a showing of cause why she has been unable until now to provide proof of service within the 90 days required by Fed. R. Civ. P. 4(m).

Respectfully submitted,



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Counsel for plaintiff Damali D. Gordon

Dated: March 9, 2021

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CERTIFICATE OF SERVICE

I certify that on this 9th day of March, 2021, the foregoing Response was filed through the Court's electronic case filing ("ECF") system, through which it was or will be made available to all counsel of record.



Stephen B. Pershing